

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

NORMA JEAN RILEY,

Plaintiff,

v.

CIVIL ACTION NO. 1:06CV145  
(Judge Keeley)

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

ORDER ADOPTING MAGISTRATE JUDGE'S  
OPINION/REPORT AND RECOMMENDATION

Pursuant to 28 U.S.C. §636(b)(1)(B), Rule 72(b), Federal Rules of Civil Procedure and Local Court Rule 4.01(d), on September 28, 2006, the Court referred this Social Security action to United States Magistrate James E. Seibert with directions to submit to the Court proposed findings of fact and a recommendation for disposition. On August 20, 2007 Magistrate Seibert filed his Report and Recommendation and directed the parties, in accordance with 28 U.S.C. §636(b)(1) and Rule 6(e), Fed. R. Civ. P., to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation and further directed the parties that failure to file objections would result in a waiver of the right to appeal from the judgment of this Court. The parties did not file any objections.

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Magistrate Judge Seibert recommended that the case be **REMANDED** to the Commissioner in order to permit a mental health medical professional to examine and evaluate Riley using the WAIS-III and WRAT-3 tests. The Magistrate Judge based his recommendation on the facts that Riley appeared pro se in the matter, did not execute a waiver of her right to counsel and the ALJ failed to adequately develop the record regarding her mental impairments.

Upon consideration of the Magistrate Judge's recommendation and having received no written objections, the Court accepts and approves the Report and Recommendation. Therefore, it is

**ORDERED** that Magistrate Seibert's Report and Recommendation is accepted in whole and that this civil action be disposed of in accordance with the recommendation of the Magistrate. Accordingly,

1. The plaintiff's motion for Summary Judgment (Docket No. 12) is **GRANTED-IN-PART**;
2. The defendant's motion for Summary Judgment (Docket No. 13) is **DENIED**; and
3. The plaintiff's claim is **REMANDED** to the Commissioner for consideration pursuant to the recommendations contained in the Magistrate Judge's Proposed Findings of Fact and Recommendation for Disposition; and
4. This civil action is **DISMISSED WITH PREJUDICE** and **RETIRED** from the docket of this Court.

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The Clerk of Court is directed to enter a separate judgment order. Fed.R.Civ.P. 58. If a petition for fees pursuant to the Equal Access to Justice Act (EAJA) is contemplated, the plaintiff is warned that, as announced in Shalala v. Schaefer, 113 S.Ct. 2625 (1993), the time for such a petition expires ninety days thereafter.

The Clerk of the Court is directed to transmit copies of this Order to counsel of record.

DATED: September 24, 2007

/s/ Irene M. Keeley

IRENE M. KEELEY

UNITED STATES DISTRICT COURT